

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.17155 of 2007
and
M.P.Nos.2, 3 and 6 of 2007

M.Kandasamy

... Petitioner

vs.

1. The District Collector,
Coimbatore District.
2. The Executive Officer,
Avinasi Town Panchayat,
Avinasi, Coimbatore District.
3. C.Murali
4. M.Pushpalatha,
President,
Avinasi Town Panchayat,
Avinasi,
Coimbatore District.

(3rd respondent impleaded as per
order dated 5.10.2007 in
M.P.No.4 of 2007)

(4th respondent impleaded as per
order dated 27.11.2007 in
M.P.No.5 of 2007)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the order passed by the second respondent in Na.Ka.No.80/2006/A dated 21.03.2007 and quash the same and further direct the respondents to extend the license to the petitioner for collecting toll.

For Petitioner	:	Mr.P.Tamilavel
For Respondents	:	Mrs.C.K.Vishnupriya, for R1 Government Advocate

Mr.Jayendra Krishnan, for R2
Mr.M.M.Sundresh, for R3
Mr.G.Ethirajulu for R4

O R D E R

By consent of all the parties, the writ petition itself is taken up for disposal.

2. This writ petition has been filed to quash the order of the second respondent in Na.Ka.No.80/2006/A dated 21.03.2007 and further direct the respondents to extend the license to the petitioner for collecting toll.

3. Every year, the second respondent, Avinashi Town Panchayat auction the right to collect toll from the users of the daily market and the successful bidder is granted the licence to collect the toll every day during the licence period. The petitioner successfully participated in the auction from the year 2002-2003 onwards and has been granted licence to collect toll from the users of daily market. The petitioner held the licence as a successful bidder from 01.04.2006 to 31.03.2007. One of the terms and conditions of the auction as contained in clause 7, is as under:

"The licensee shall not put up any temporary structures and shops either at his cost or at the expense of others and that he should put up only temporary structures like tents which could be removed at the end of the market session every day."

On this premise, the petitioner was collecting toll from the daily market. The property remained with the second respondent panchayat and the petitioner as licensee was given the right to collect toll from the users for the period specified. On 31.3.2007 the licence period expired and the petitioner has no right to enter the premises or collect toll thereafter.

4. On 21.03.2007, the Executive Officer of the Town Panchayat issued a notice to the petitioner stating that the licence period of the petitioner expires on 31.03.2007 and on inspection, it was found that a number of temporary structures are put up. Therefore, in accordance with the rules and regulations issued by the Coimbatore District Gazette Notification, the petitioner was directed to hand over vacant possession of the daily market on or before 31.03.2007. Based on this notice, the petitioner has filed the present writ petition to quash the same with a further direction to the respondents to extend the licence to the petitioner for collecting toll at the daily market. This notice enabled the petitioner to come

to this Court seeking the extended relief of the right to continue to collect the toll. What prompted the then Executive Officer to issue the notice when the petitioner's licence was to expire in 7 days is the moot question posed by the counsel for the impleaded third respondent.

5. The main ground taken in the writ petition is that the order dated 21.03.2007 has been passed only because there had been violation of the tender conditions, which according to the petitioner is not correct. It is also stated that no opportunity was given to the petitioner before passing of the impugned order and therefore there is violation of the principles of natural justice.

6. It is averred in para 7 of the affidavit filed by the petitioner as follows:-

"7. I humbly submit that during the pendency of the present writ petition, I undertake to make remittances to the second respondent from the collection of the toll as it was done throughout. The handing over the vacant possession forthwith will not fetch only immediate income to the second respondent and it would also affect the survival of the petitioner and other merchants."

7. The petitioner filed M.P.No.2 of 2007 for grant of interim injunction restraining the respondents from interfering with the peaceful possession and enjoyment of his rights to collect toll from the merchants doing business in the daily market and M.P.No.3 of 2007 for stay of the order dated 21.03.2007. This Court, by order dated 09.05.2007 granted conditional stay in the event of the petitioner holding the possession and doing the business continuously. The petitioner is now in collecting toll from the users of the daily market based on the interim order of this Court.

8. Learned counsel for the petitioner states that the prayer in M.P.No.2 of 2007 is for an interim injunction not to disturb the petitioner's possession and M.P.No.3 of 2007 is to stay the order dated 21.03.2007. It is only in the writ petition that the relief to collect the toll was sought by the petitioner and therefore, the petitioner did not collect the toll. It has been brought to light that pursuant to the interim order of this Court, the petitioner continues to collect toll from the users of the daily market. M.P.No.4 of 2007 is filed by one C.Murali, who claims to be the successful bidder in the auction that was held on 15.02.2007 for the current period (i.e.) 1.4.2007 to 31.3.2008 and M.P.No.5 of 2007 is filed by the President of the Avinasi Town Panchayat to implead herself as one of the respondents in the writ petition. Both the

petitions were allowed. The vacate stay petition in M.P.No.6 of 2007 is filed by the successful bidder C.Murali.

9. Learned counsel appearing for the successful bidder, who has been impleaded as the third respondent in the writ petition brought to the notice of this Court that the petitioner's licence expired on 31.03.2007; the Town Panchayat conducted the public auction on 15.02.2007 and the third respondent the successful bidder paid the bid amount of Rs.2,85,100/- to the Town Panchayat after being declared the successful bidder for grant of licence for the period 01.04.2007 to 31.03.2008. The third respondent thereafter called upon the officers of the Town Panchayat to hand over the vacant possession which has been unauthorisedly occupied by the present writ petitioner. It is specifically stated in the vacate stay petition that the writ petitioner also participated in the auction but was unsuccessful. The petitioner having lost in the auction, has filed the writ petition knowing fully well that he has no right to enter the daily market premises and collect the toll after 31.3.2007. It is further stated that the writ petitioner has suppressed the material facts before this Court and had obtained the interim orders. The third respondent prayed for vacating the interim order and to dismiss the writ petition. According to the learned counsel for the third respondent, the successful bidder, having paid the entire bid amount of Rs.2,85,100/- to the second respondent Town Panchayat, he is put to great prejudice and is suffering loss. The petitioner is unjustly enriching himself by collecting toll from users of daily market without any legal right.

10. Mr.G.Ethirajulu, learned counsel appearing for the President of the Town Panchayat, who has been impleaded as the fourth respondent in the writ petition stated that by suppressing material facts, the petitioner has obtained the interim orders from this Court and has caused great loss to the Town Panchayat. It is stated that the petitioner had misappropriated the toll amount collected from the merchants in the daily market and has not paid the collected amount to the Panchayat, in spite of his specific averment in paragraph 7 of the writ petition, as aforesaid and therefore, the writ petition should be dismissed with heavy cost.

11. Learned counsel appearing for the second respondent town panchayat reiterated the contention made on behalf of the President of the town panchayat and stated that the writ petition is filed only to unjustly enrich himself by abusing the process of court without any legal right.

12. Mrs.C.K.Vishnupriya, learned Government Advocate for the first respondent submitted that since the licence period expired on 31.03.2007, the petitioner has no right to enter the premises and has to quit without demur. There is no renewal clause and the term

expired by 31.3.2007. Petitioner has filed this writ petition suppressing material facts. The writ petition is misconceived, patently illegal and improper. Without prejudice it is submitted that the petitioner in spite of his undertaking failed to pay the toll amount collected to the Panchayat caused great loss to the Town Panchayat and therefore, she stated that the writ petition should be dismissed with exemplary cost.

13. At the time of hearing on the earlier occasion the the learned counsel for the petitioner stated that from 01.05.2007 till 31.10.2007, the petitioner has paid the toll amount regularly and to prove the same, he undertook to file an affidavit with the supporting document. Pursuant to the directions of this Court, an affidavit was filed on 26.11.2007, wherein the petitioner has stated as follows:

"2. I respectfully submit that I filed this writ petition challenging the order of the second respondent herein dated 21.03.2007 and got injunction restraining the respondents from collecting toll from the second respondent. As soon as I received the order I approached the second respondent to pay the toll amount for a sum of Rs.6,400/- for the month of May and subsequent months. But the second respondent has refused to receive the payment remitted by me for the simple reason that the case is pending before the High Court. Hence I have remitted the toll amount Rs.12,800/- by demand draft dated 17.11.2007 for the period of September and October by registered post. But the second respondent had returned the demand draft, since the case is pending before the High Court. I further submit that I have taken sincere effort to remit the toll to the second respondent, but the second respondent refused to receive the same for the reasons best known to them. I am prepared to pay entire dues from April to till date. I herewith enclose the xerox copy of the demand draft and the letter of the second respondent."

14. Learned counsel for the petitioner earlier contended that he did not seek an order from Court to collect the toll and he did not collect any toll from the daily market. This statement is also incorrect as the interim injunction is to restrain the authorities from interfering with petitioner's peaceful possession and his right to collect toll from the merchants. However, from the affidavit filed on 26.11.2007, it is clear that the petitioner has been collecting toll from the daily market based on the interim order of

this Court. For the first time, it is stated in the affidavit dated 26.11.2007 that the petitioner approached the second respondent to pay the toll amount for the month of May and subsequent months, but the second respondent refused to receive the payment. However, the document filed along with the affidavit shows that the demand draft was taken only in the month of November 2007 even though the petitioner has been collecting the toll amount even after the expiry of the licence, i.e., from 01.04.2007 till date. The demand draft allegedly sent by the petitioner was rightly refused by the authorities on the ground that it was remitted by an Association and the petitioner's conduct was contrary to the rules.

15. From the narration of the above facts, it is clear that the petitioner is a licensee for the period 01.04.2006 to 31.03.2007 and he has no right to continue beyond the said period. The notice dated 21.03.2007 issued by the second respondent, which is under challenge in this writ petition is an intimation calling upon the petitioner to vacate the premises at the time of completion of the licence period. It did not cancel or annul a right. Therefore, the plea of violation of principles of natural justice cannot be accepted. The authority only stated that the petitioner has put up some construction contrary to the rules. The petitioner has no right to be in occupation of the premises, namely, the daily market, after the expiry of the licence period. The conditions of licence clearly states that on expiry of the period, the petitioner has to hand over the vacant site of the daily market to the respondent authorities. There is no renewal clause in the licence, which ended on 31.03.2007. Therefore, the licensee writ petitioner cannot claim any right beyond 31.03.2007. He has no legal right to file the present writ petition seeking the above said relief. Hence, the petitioner is not entitled to any relief in this writ petition filed under Article 226 of the Constitution of India. See (2007)6 Supreme Court Cases 44 (Ram Singh Vijay Pal Singh and others - State of U.P. And others).

16. The writ petitioner, licensee whose period has expired cannot have any vested right to continue to be in possession and collect the toll without a right in his favour. The notice calling upon the petitioner to vacate the daily market after the expiry of the period unfortunately gave a lever to the petitioner and a cause of action to file this misconceived writ petition. The writ petitioner has suppressed material facts before this Court, that he had participated in the auction held on 15.02.2007 for the subsequent period, but was unsuccessful. Except stating that the petitioner was granted licence for the period that ended on 31.03.2007, no other material is placed before this Court to show that he has got the right to collect the toll from the users of the daily market after 31.3.2007 or for renewal of licence thereafter. It is also not in dispute that the petitioner participated in the auction and was unsuccessful. Therefore, the petitioner to his knowledge is aware of

the fact on 15.02.2007 itself, that he has no right to continue beyond 31.03.2007. The fact that the petitioner participated in the auction on 15.02.2007 and he was unsuccessful in the auction has been suppressed in this writ petition and the interim order has been obtained. Therefore, the petitioner is not entitled to invoke the discretionary and extraordinary jurisdiction of this Court under Article 226 of Constitution of India. See 2007(4) CTC 727 (Prestige Lights Limited - vs. - State Bank of India). Paras 33 and 35, which read as follows:-

"33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the Petition and dismiss it without entering into merits of the matter."

"35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the Writ Courts would become impossible."

Writ petition is liable to be dismissed also on the ground of suppression of facts as set out above.

17. The original Auction Register of the Avinasi Town Panchayat was produced before this Court by the second respondent to show that on 15.02.2007, the petitioner had participated in the auction along with other participants and appended his signature in the Auction Book and the successful bidder, by name, C.Murali is also recorded in the said register. It is, therefore, clear that the petitioner with a mala fide intention of collecting the toll after the expiry of the licence period has filed the present writ petition, suppressing the material facts and an order of interim injunction and stay has been obtained. The petitioner knowing fully well that he has no legal right to collect the toll from the users of the daily market beyond the licence period, armed with the interim order of this Court has proceeded to collect the toll amount from the users of the daily market. In the affidavit as well as in the subsequent date of hearing, i.e. on 20.11.2007, the petitioner has stated that he has collected the toll amount and has paid the same regularly to the authorities. Now, it is apparent from the records that no amount has been paid to the second respondent Town Panchayat and the two drafts were taken by some other persons after a long gap of time. Petitioner has abused the process of law for personal gain without any right. Hence, the petitioner is not entitled to any relief and writ petition is liable to be dismissed for all the above stated reasons.

18. Learned counsel for the third respondent successful bidder has stated that the third respondent has deposited the entire bid amount based on the auction conducted on 15.02.2007 and the respondents have not refunded the amount nor did they allow him to do business in the said premises and pleaded that he should be allowed to collect toll for the balance period and the second respondent can retain the amount paid proportionate to the remaining period and the balance should be refunded.

19. Faced with such a situation the learned counsel for the petitioner stated that petitioner is agreeable to pay the amount to the Panchayat as stated by him in his sworn affidavit filed along with the writ petition and stated that he has no intention to cause loss to the Panchayat. Learned counsel for the petitioner submits that the petitioner will vacate the premises and hand over the same to the Panchayat on 24.12.2007 without demur and without making any further claim and the same is recorded.

20. Learned counsel for the second respondent Town Panchayat stated that due to the pendency of the present writ petition and the interim order granted by this Court, the Panchayat has lost valuable money. The petitioner has been collecting toll from the daily market and unjustly enriched himself. The President and the Executive Officer of the Avinashi Town Panchayat produced a calculation showing

the proportionate amount that has to be paid by the petitioner from 01.04.2007 till 23.12.2007, based on the auction conducted on 15.02.2007. The amount comes to Rs.2,17,000/- and it is accepted by the petitioner who stated that the said amount will be paid by the petitioner to the second respondent Town Panchayat with interest at the rate of 7.5% per annum within a period of forty five (45) days from today. The same is also recorded. It is, however, open to the second respondent to make any further claim if they are entitled to as per law.

21. The second respondent having declared the third respondent as the successful bidder for grant of licence to collect toll at the daily market and received the auction amount, should have taken steps to get the interim order of this Court vacated. It is at the behest of the impleaded third respondent, the successful bidder that the suppression of facts has come to light. The third respondent is willing to accept the licence for the remaining period for the value proportionate to the balance period. The second respondent is willing to consider the same positively. It is open to the third respondent successful bidder to make a request to the second respondent for refund of the bid amount or for continuation of the licence for the balance period on terms. In view of the interim order of the court and the pendency of the writ petition, the second respondent or any other authority concerned will consider the same objectively keeping in mind the decision of the Apex Court in 1996(2) SCC 459 (Gursharan Singh and others - vs. - New Delhi Municipal Committee), paragraph 13 and the legal maxim "Actus curiae neminem gravabit" (i.e.) the act of court should prejudice none.

22. In fine, this writ petition is dismissed, the interim orders passed in M.P.Nos.2 and 3 are vacated and the same are dismissed. The petition M.P.No.6 of 2007 is allowed. Considering the very earnest plea made by the learned counsel for the petitioner on behalf of his client and the offer to compensate the second respondent for the period 1.4.2007 to 23.12.2007 unconditionally, there will be no order as to costs.
abe/ts

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Collector,
Coimbatore District.

2. The Executive Officer,
Avinasi Town Panchayat,
Avinasi, Coimbatore District.

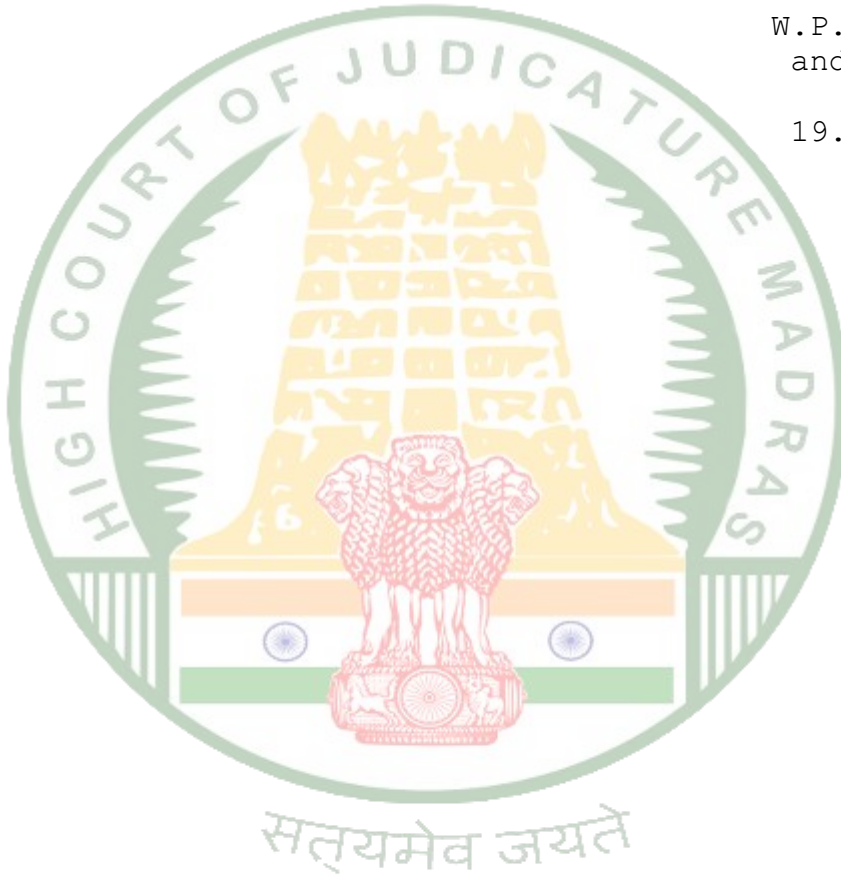
- One cc to M/s. A. Tamilavel, Advocate SR 75504
- One cc to Mr. M.M. Sundrish,
- Two cc to Mr. J. Raja Kalifulla, SR 71763, 75355
- One cc to Mr. G. Ethirajulu, SR 75660
- One cc to Government Pleader SR 75904

KS (co)
sg 08/01/08

Order in

W.P.No.17155 of 2007
and connected M.Ps.

19.12.2007



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